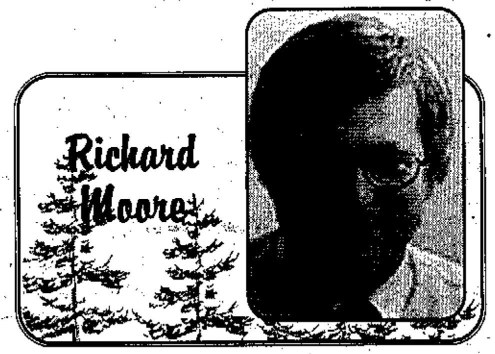
DNR performance art: NR115 is an act of oppression



Yep, they're back.

That lively group of con – er, performance – artists known as the Wisconsin Department of Natural Resources has yet another version of how to regulate shoreland development.

As with previous drafts – how many now have there been? Eight? Nine? Ten? Who's counting? – the new rules represent an entirely different approach to restricting the use of waterfront properties.

This time, the regulatory theme is "impervious surfaces," an ostensible bid to restrict the amount of hard surfaces within 300 feet of the water and thus diminish harmful runoff into lakes. Nonconformity as a regulatory idea has hit the wastebasket, at least rhetorically.

But different though the approach may be, people should know the goal and the theme of the DNR is the same: They want every structure within 75 feet of the ordinary high water mark gone, and they want to expand that setback ever further, by way of a new shoreland zoning code and ever more lakebed determinations.

That is why agency staff must be given credit as performance artists, for no matter how many scripts they produce, no matter how many dances they choreograph, or how many different tunes they sing, it's all about taking property and pursuing a narrow aesthetic agenda.

Everything else is a show.

As folks may remember, the DNR set out in 2003 to hasten the demise of all structures within the state's 75-foot setback and to make life a living hell for people owning such structures until they "complied" (DNR dictionary: "Comply – To destroy one's home for the sake of an elite few; to obliterate lifetime investments; to deny future generations the inheritance of family homesteads for their use and enjoyment).

In the first go-rounds, the DNR artists took a minimalist approach to their performance, barely dressing up the radical nature of what they were trying to accomplish.

So they proposed to regulate such things as the color people could paint their homes – earth tones, don't you know, so as not to stress out mostly color-blind wildlife – and such things as a requirement for a "net project area" requiring lots to have at least 5,000 square feet of buildable land, not including wetlands or land in the shoreland buffer area.

All that brought out hoots and heckles from the audience, so the DNR polished up its act. They came back with what they said was a generous concession: They would allow homes within the 75-foot setback to stay.

But in their second act, our shoreland players forgot to dress up other absurd and obvious restrictions on expansion, new and tighter setbacks from wetlands, and the inability to replace existing foundations, among other things. Oops.

Needless to say, this new medley of regulations did not sit well with the viewing public, either. The blunt and blatant targeting of nonconforming structures was in fact a huge debacle and so it was back to the scriptwriting room for the agency hacks, I mean, artists.

In this latest effort, the DNR finally realized what it had to do: It had to come up with something that sounded good and politically sensible, even if it wasn't.

Outgoing DNR secretary Scott Hassett was the lead vocalist on this effort, issuing a memo to the Natural Resources Board that assured them the agency had listened to the public.

Yes, yes, he intoned, the agency realized that many people had huge investments in properties that were compliant when they were bought and built upon, and the DNR would respect that.

Staff would no longer try to regulate "nonconformity" as such but would apply a new standard to all properties within the state's shoreland zone and regulate impervious surfaces.

Not only could "nonconforming structures" stay for many years, he said, many might be able to expand, and the regulatory burden for maintaining unpolluted lakes would not fall squarely on properties within 75 feet of the shore but upon all properties within the 300-foot shoreland zone. Everyone would share the pain for a better world.

Ah, but the devil's in the details.

Some of the details we have and they are scary enough. For unimproved properties, the impervious surface limit would be 10 percent, with the option to expand to 20 percent by adopting certain almost assuredly expensive mitigation plans.

For properties with existing buildings, rooftops, driveways and other hard surfaces would be limited to 15 percent, with an ability to reach 20 percent by paying for equally expensive mitigation. The limits would not apply to existing properties until they were altered, replaced, or expanded.

As Tom Larson of the Wisconsin Realtors Association has pointed out, that's very restrictive. To use his example, a typical 2,000-square foot home with a driveway, patio, and a portion of the road would not be allowed on a 20,000-square foot waterfront lot without mitigation, and, even with mitigation, the home, garage, patio or any other structure could not occupy more than a 23 by 50-foot area, after accounting for the roadway and driveway.

And just what mitigation would be required?

Well, that's hard to say. The agency says it wants postdevelopment runoff to equal predevelopment runoff. To figure that, staff says, they will calculate such things as soil types, distance from the shore and the building project itself, coming up with "matrixes" that set the mitigation requirements accordingly.

Conveniently, those matrixes aren't yet available, but when they are you can bet they will be nightmarish. Anytime the DNR uses a word like matrix, watch out.

The goal here is obvious. The DNR is simply offering a plan to do away with development completely within the shoreland zone, and everything else is political rhetoric.

The idea is to make development legal but so expensive it's not practical, especially, I believe, for existing properties within the 75-foot setback. I can't wait to see those matrixes.

Mr. Hassett may have opined in his memo to the NRB that the DNR had recognized the lifetime investments of law-abiding citizens, but he slipped when he followed that language with these words: "This proposal still has the goal of ultimate compliance. . ."

And what is ultimate compliance? In Mr. Hassett's own words, it's elimination.

This truth is, this new proposal is no doubt the most onerous draft yet, for it extends the regulatory reach of the DNR, with its aim of elimination, farther than the department has ever dared to go, with vast restrictions beyond the 75-foot setback.

In effect, this is the beginning of an effort to move the setback itself to 300 feet, and the new restrictions, if passed, amount to a de facto partial move of the setback line, a precursor to an actual and formal 300-foot setback.

People should know that that has been a goal for many years, and so this should come as no surprise. As far back as 1988, the department developed a model ordinance and mission language calling for no net increase of impervious surfaces within 300 feet of the shoreline without 100 percent mitigation.

Until now, staff has not felt confident enough to actually propose such a state standard. Apparently they do now.

Speaking of mitigation, all of this would be an unmitigated disaster for northern residents and local governments.

First, it will be an enforcement nightmare. How much will it cost counties to ensure compliance? How much will the total be to conduct the many more onsite visits that will be necessary? How many more staff will have to be hired?

For property owners, too, the costs will be crushing. It's hard to see how any development could move forward without an engineer or other technical professional to figure out the impacts of a project.

What's more, most counties do not now have impervious surface regulations in place, and, in cases where such regulations exist, many are more liberal than the proposed standards.

In Vilas County, for example, a 30 percent impervious surface standard is in place. As Vilas County zoning administrator Dawn Schmidt has pointed out, the owners of many existing lots would be restricted by the new proposal to a house and garage of limited size.

Not only would these property owners be deprived of the use of land they bought under different legal conditions but the county would likely face an explosion of variance requests as those owners seek a redress of the state's taking of their land.

And it won't just be shoreland property owners who will pay the price of this NR115. In the end, every taxpayer in the North will pay, as the need for extra zoning and enforcement staff drives property taxes higher and higher, both on and off the water.

Besides the impervious surface standards and mitigation requirements, the new draft embodies a host of other problematic regulations, too numerous to list here, including but not limited to land division requirements and height restrictions.

The bottom line is, the public needs to say Whoa and No to this dreadful proposal.

First and foremost, no new standard should be put into place until that standard covers every waterway and water body in the state. The new proposal continues an exemption for incorporated cities, the result of a political compromise that was long ago outdated, if it was ever wise at all.

The waters in Milwaukee and Madison and Rhinelander need protecting every bit as much as the waters in Minocqua.

Bringing those more urban realities to the table would not only make for a fairer standard but provide the basis for a more realistic approach to regulation. Until that happens, until the master planners who live in the cities must abide by their own rules, no revision should move forward.

Finally, when is the agency going to realize what the real threat to our lakes is these days?

Yes, development has to be regulated, but the current NR115 provides a reasonable and livable standard by which counties can maintain the environmental integrity of the shoreland.

Some changes may ultimately be necessary, but right now there is a bigger fish to fry, so to speak, and its name is aquatic invasive species. The DNR needs to pull its head out of the sand and press the Legislature for the money to win that war, for AIS poses the single most imminent threat to our water quality.

Instead, the agency just continues to fiddle with NR115 while Rome burns in the background.

That might look good on a stage. It might be great performance art, but it's terrible, terrible public policy and a real tragedy in the making.

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